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9 Las Vegas, Nevada 89117
10 Telephone: (702) 255-1718
11 Facsimile: (702) 255-0871
12 *Attorneys for Plaintiff*

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 * * * * *

11 ROSEBERRY FAMILY TRUST, by and through
12 its Trustee Robert Roseberry,

13 Plaintiff,

14 vs.

15 OMNI ADVISOR GROUP, INC., et al.,

16 Defendants.

CASE NO.: 2:10-cv-00903-JCM-RJJ

PLAINTIFF'S MOTION FOR
ATTORNEY'S FEES AND COSTS

Date: N/A

Time: N/A

17 Plaintiff Roseberry Family Trust, by and through its Trustee Robert Roseberry
18 ("Plaintiff", "Judgment Creditor" or "Roseberry"), by and through its attorneys, Christensen
19 James & Martin, hereby submits this Motion for Attorney's Fees and Costs. This Motion is
20 made and based upon the Memorandum of Points and Authorities, Declaration of Counsel and
21 Exhibits attached hereto, the pleadings and papers on file herein and oral argument at the hearing
22 hereon, if any.

23 DATED this 16th day of September, 2011.

24 CHRISTENSEN JAMES & MARTIN

25 By: /s/ Wesley J. Smith

26 Wesley J. Smith, Esq.

27 *Attorneys for Plaintiff*
28

CHRISTENSEN JAMES & MARTIN
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 & FAX: (702) 255-0871

1 and costs under the Consent Decree and Enforcement Order. Therefore, the Plaintiff's
2 respectfully request that the Court enter an Order against Defendants in the amount of
3 \$13,259.70 for payment of the Plaintiff's reasonable attorney's fees and costs incurred during the
4 Payment Period to enforce the Consent Decree and Enforcement Order. A proposed Order is
5 attached hereto as Exhibit "3".
6

7 DATED this 16th day of September, 2011.

8 CHRISTENSEN JAMES & MARTIN

9 By: /s/ Wesley J. Smith
10 Wesley J. Smith, Esq.
11 *Attorneys for Plaintiff*
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CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On the date of filing of the foregoing papers with the Clerk of Court I caused a true and correct copy to be served in the following manner:

☒ **ELECTRONIC SERVICE:** Pursuant to Local Rule LR 5-4 of the United States District Court for the District of Nevada, the above-referenced document was electronically filed and served on all appearing parties through the Notice of Electronic Filing automatically generated by the Court.

☒ **UNITED STATES FIRST-CLASS MAIL:** By depositing a true and correct copy of the above-referenced document into the United States Mail with prepaid First-Class postage, addressed to the parties at their last-known mailing address(es) set forth below:

Omni Advisor Group, LLC
SI 100, LLC
Brian McGuane
23017 Calvert Street
Woodland Hills 91367

Christopher Erwin, Esq.
ERWIN LEGAL P.C.
9170 Irvine Center Drive
Irvine, California 92618
Attorneys for SI 100 Trust

☐ **FACSIMILE:** By sending the above-referenced document via facsimile to those persons listed on the above service list at the facsimile numbers set forth above.

☐ **EMAIL:** By sending the above-referenced document via email to those persons listed on the above service list at the email addresses set forth above.

CHRISTENSEN JAMES & MARTIN

By: /s/ Natalie Larson

Exhibit 1

Exhibit 1

CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ.
Nevada Bar No. 000175
Email: kbc@cjmlv.com
WESLEY J. SMITH, ESQ.
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Facsimile: (702) 255-0871
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * * * *

ROSEBERRY FAMILY TRUST, by and through
its Trustee Robert Roseberry,

Plaintiff,

vs.

OMNI ADVISOR GROUP, INC., *et al.*,

Defendants.

CASE NO.: 2:10-cv-00903-JCM-RJJ

DECLARATION OF COUNSEL
IN SUPPORT OF PLAINTIFF'S
MOTION FOR ATTORNEY'S
FEES AND COSTS

Date: N/A

Time: N/A

STATE OF NEVADA)
 : ss.
COUNTY OF CLARK)

Wesley J. Smith, Esq., being first duly-sworn, and under penalty of perjury under the laws of the United States of America, now deposes and says that:

1. I am an attorney duly licensed to practice in the State of Nevada and have been practicing in this jurisdiction since May 2010. I am employed by the law firm of Christensen James & Martin ("CJM"), counsel of record for Plaintiff/Judgment Creditor Robert Roseberry, Trustee of the Roseberry Family Trust ("Plaintiff" or "Roseberry"), in Case No. 2:10-cv-00903-JCM-RJJ ("Case"). I make this Declaration in support of Plaintiff's Motion for Attorney's Fees

1 & Costs (“Motion”). I have personal knowledge and can testify as to the truth of the facts
2 hereinafter recited.

3 2. The Court entered a Consent Decree [Doc. 27] (“Consent Decree”) on or about
4 September 7, 2010 and a Judgment and Order Enforcing Consent Decree and Appointing Post-
5 Judgment Special Master [Doc. 50] (“Enforcement Order”) on or about March 3, 2011
6 (“Judgments”)
7

8 3. The Judgments are against Defendants Omni Advisor Group, Inc. (“Omni”), SI
9 100, LLC (“SI 100”), SI 100 Trust (“SI 100 Trust”) and Brian Patrick McGuane (“McGuane”),
10 individually and as Trustee of the SI 100 Trust (collectively “Judgment Debtors”), jointly and
11 severally.

12 4. As part of the Enforcement Order, the Court awarded the Plaintiff its fees and
13 costs incurred to enforce the Consent Decree in the amount of \$28,875.12 [Doc. 50, p. 2, ¶ 5].
14 At the time the Enforcement Order was submitted by the Plaintiff to the Court for approval, my
15 firm had billed the Plaintiff for work performed through January 31, 2011. Therefore, the
16 Plaintiff has received its attorney’s fees and costs through January 31, 2011.
17

18 5. As part of the Consent Decree, the Judgment Debtors promised and were Ordered
19 to pay Plaintiff’s attorney’s fees and costs necessarily incurred to enforce the terms thereof. This
20 promise was incorporated into the Enforcement Order [Doc. 50, p. 3, ¶ 6(a)]. The Special
21 Master was specifically charged with carrying forth the obligations imposed by the Consent
22 Decree. *Id.*
23

24 6. During the period February 1, 2011 to August 31, 2011, it has been necessary for
25 the Plaintiff to incur attorney’s fees and costs to attend hearings, prepare the Enforcement Order,
26 cooperate with the Special Master, participate in the Special Master’s investigation, support the
27 Special Master in his duties, format and submit Special Master filings, notices and reports and
28

1 generally enforce the Judgments. In total, the Plaintiff has incurred \$13,259.70 to complete these
2 tasks.

3 7. I have been the primary attorney responsible for the work performed by my firm
4 for Plaintiff in this Case. To the best of my knowledge, (a) the statements regarding fees and
5 costs set forth in the Motion are true and accurate, and (b) the fee statements attached to the
6 Motion as Exhibit "2" are true and correct copies of the fee statements billed to the Plaintiff for
7 work performed by our firm in this Case for the period February 1, 2011 to August 31, 2011. I
8 have reviewed the fees statements and I confirm that they are a true and accurate record and
9 representation of the type of work, the amount of time and the attention given to this case by our
10 firm in support and enforcement of the Judgments. The quality of the work we have performed
11 for the Plaintiff in this case is sufficient to justify the fee application submitted in the Motion,
12 which sum I believe the Court should award to the Plaintiff.
13

14
15 8. The rates charged by CJM to Plaintiff for attorney services rendered in this Case
16 are: Kevin Christensen - \$250, Daryl Martin - \$225 and Wesley Smith - \$175.

17 9. I am informed that rates for attorneys in the general Las Vegas area with reputable
18 experience and skill to be \$150.00 to \$400.00 per hour and \$50.00 to \$110.00 per hour for legal
19 assistants and paralegals.

20
21 10. I declare under penalty of perjury that the foregoing is true and correct.
22 Further your affiant sayeth naught.

23 DATED this 16th day of September, 2011.

24 By: /s/ Wesley J. Smith
25 Wesley J. Smith, Esq.
26
27
28

Exhibit 2

Exhibit 2

STATEMENT

Kevin B. Christensen, Chartered
dba Christensen James & Martin
History Report

Case 2:10-cv-00903-JCM-RJJ Document 65 Filed 10/17/11 Page 10 of 19

7440 W. Sahara Ave.
Las Vegas, NV 89117
702/255-1718
702/255-0871 Fax
KBChrislaw@aol.com

Bob Roseberry
7811 Howard Dade
Las Vegas, NV 89129

September 15, 2011

Professional Services

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
<u>February 2011</u>				
2/2/2011	- KBC	Review Hearing Order and Conference with Attorney (W Smith)	250.00/hr	50.00
	- WJS	Telephone call from Attorney for Transamerica regarding status of Case; receive Notice of change of Hearing date; letter to McGuane; telephone call to B Roseberry	175.00/hr	35.00
2/3/2011	- KBC	Review Court Hearing Notice; Conference with Attorney (W Smith) regarding Auto-Pay Procedures for Premiums/Loans and Writ of Fees	250.00/hr	125.00
	- WJS	Telephone call from B McGuane regarding Hearing; letter to B McGuane regarding Hearing with enclosed Documents	175.00/hr	227.50
2/10/2011	- WJS	E-mail to counsel for Transamerica regarding status of Policy; review attachments; schedule Premium Payments/Values	175.00/hr	35.00
2/15/2011	- WJS	Preparation of Order to Show Cause Hearing; create outline for Court; Factual Argument; email from counsel for Transamerica regarding confirmation of Beneficiary Designation; review attached Documents	175.00/hr	210.00
2/18/2011	- WJS	E-mails to and from A Bader regarding Dismissal of Transamerica; preparation of and file Notice of Dismissal; preparation for Show Cause Hearing	175.00/hr	245.00

Bob Roseberry

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			<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
2/18/2011	- KBC	Review Insurance Company Dismissal and Conference with Attorney regarding Hearing	250.00/hr		50.00
2/22/2011	- KBC	Conferences with Attorney and Client regarding Court Orders and Judgment; email to potential Special Master; telephone calls to and from Client and Attorney; telephone call and email to potential Special Master (SAB)	250.00/hr		150.00
	- WJS	Review Exhibits and Outline for Hearing; preparation for Hearing; Meeting with R Roseberry at Court; Review strategy and plan for Hearing; Appearance at Show Cause Hearing; Conference with Attorney (K Christensen) and R	175.00/hr		630.00
2/23/2011	- KBC	Conference with Attorney; preparation of Judgment and Special Master Orders	250.00/hr		75.00
	- WJS	Draft Affidavit for Proof of Service; preparation of and file Proof of Service for Notice of Hearing; email to R Worthen; telephone calls to and from R Worthen regarding background and Case Procedure; draft proposed Order;	175.00/hr		507.50
2/24/2011	- WJS	Draft proposed Orders; telephone calls and emails to and from R Worthen; Conference with Attorney (K Christensen); review revisions to proposed Order	175.00/hr		507.50
	- KBC	Revise Judgment and Court Orders; Conference with Attorney (W Smith)	250.00/hr		150.00
2/25/2011	- KBC	Conference with Attorney (W Smith) regarding Judgment and Order and Disclosure	250.00/hr		75.00
	- WJS	Revise Proposed Order; email from R. Worthen with List of Documents for Audit; review and revise Order and email draft to R. Worthen; email from R. Worthen regarding Affidavit and Disclosure of Conflict; draft Affidavit and email	175.00/hr		612.50
SUBTOTAL:			[3,685.00]
<u>March 2011</u>					
3/3/2011	- WJS	Review Enforcement Order; draft letter to McGuane; email to R Worthen; calendar Deadlines	175.00/hr		227.50
3/7/2011	- WJS	Telephone calls to and from Special Master and B Roseberry; telephone calls to and from Special Master regarding need for Independent Counsel; Conference with K Christensen	175.00/hr		70.00
	- KBC	Review Order Enforcing Judgment; calendar Attorney (W Smith) regarding Special Master Issues	250.00/hr		75.00

Bob Roseberry

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		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
3/8/2011 -	WJS Review documents; preparation for and meeting with Special Master and R Roseberry; email documents to Special Master	175.00/hr		332.50
3/15/2011 -	KBC Conference with Attorney (W Smith) regarding Instructions to Bank, Payment Orders from Omni Assets and Registration of Judgment	250.00/hr		150.00
-	WJS Telephone call from R Worthen regarding status and control of Accounts and cooperation of McGuane; Conference with K Christensen; telephone call to R Worthen regarding course of action for Administering Accounts	175.00/hr		210.00
3/16/2011 -	WJS Telephone calls to and from R Worthen regarding SSN's and DOB's; Westlaw Public Records research; Research requirements for Domesticating Judgment in California	175.00/hr		140.00
3/17/2011 -	WJS Preparation of Application for Certification of Judgment to Register in Another District and file	175.00/hr		105.00
SUBTOTAL:				[1,310.00]
<u>April 2011</u>				
4/4/2011 -	KBC Conference with Attorney (W Smith) regarding Reimbursement Check for Fees and Costs	250.00/hr		50.00
-	WJS Fax from R Roseberry regarding West Coast Life Policy Notice of Grace; email to R Worthen; telephone calls to and from R Worthen regarding Attorney's Fees Payment; calculate Interest; prepare Receipt of Payment for Special	175.00/hr		140.00
4/8/2011 -	KBC Conference with Attorney regarding new Omni Counsel and Special Master Issues	250.00/hr		75.00
-	WJS Telephone call from Attorney for B McGuane; Conference with K Christensen; telephone call from Special Master; emails to and from Special Master	175.00/hr		157.50
4/11/2011 -	WJS Telephone conference with B Roseberry; telephone calls to and from Special Master regarding Status Report, Fee Application, Postal Inspector and McGuane Compliance; draft Pleading and Declaration of R Worthen for Status	175.00/hr		542.50
4/12/2011 -	KBC Conference with W Smith regarding telephone conference with opposing counsel and Special Master	250.00/hr		50.00
4/13/2011 -	WJS Review Special Master's Report for filing; prepare Exhibits; telephone call from Special Master regarding Additional Payments and Revision of Report	175.00/hr		87.50

Bob Roseberry

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		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
4/14/2011 - WJS	Review Documents from Special Master regarding Payment Records; receive revised Status Report; prepare Pleadings, Declaration, Report and Exhibits for filing; telephone call from Special Master regarding Accountant and Bank	175.00/hr		280.00
4/25/2011 - KBC	Review Court Notice regarding Motion	250.00/hr		25.00
SUBTOTAL:				[1,407.50]
<u>May 2011</u>				
5/10/2011 - WJS	Telephone calls to and from Special Master regarding TransAmerica Payment	175.00/hr		52.50
- KBC	Conference with Attorney regarding Transamerica Policy, Fees Application and Status Report by Special Master	250.00/hr		50.00
5/11/2011 - WJS	Draft and file Non-Opposition to Special Master Fee Application consenting to Payment of Special Master Fees	175.00/hr		105.00
- KBC	Review Non-Opposition	250.00/hr		25.00
5/17/2011 - WJS	E-mail from Special Master regarding Payment of Transamerica Policy Loan	175.00/hr		17.50
5/18/2011 - WJS	Preparation of Notice of Transamerica Policy Loan Payment; emails to and from Special Master; prepare Notice for filling and file	175.00/hr		87.50
- KBC	Review Notice of Transamerica Loan Payment	250.00/hr		25.00
5/24/2011 - KBC	Telephone call from SAB and Conference with Attorney, W Smith regarding Court Order and Future Procedures	250.00/hr		100.00
SUBTOTAL:				[462.50]
<u>June 2011</u>				
6/1/2011 - WJS	Telephone calls emails to and from Special Master; review Draft of Special Master Report and make editing suggestions; Conference with Attorney (K Christensen) regarding Report and Findings; preparation of Final Report	175.00/hr		315.00
- KBC	Review file and Conference with Attorney regarding Special Master Report and Findings and Response Issues; review Report	250.00/hr		100.00

Bob Roseberry

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			<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
6/2/2011	- KBC	Conference with Client regarding Special Master Report and Options for Judgment Debtor Exam and Policy Interest Requests	250.00/hr		200.00
	- WJS	Review Special Master Report with R Roseberry and Conference regarding Plan of Action ; Serve Report on all Parties; Conference with Attorney (K Christensen) regarding Hearing; telephone call to Special Master	175.00/hr		297.50
6/3/2011	- WJS	Preparation of Discovery Requests; email to Special Master; telephone call to Special Master regarding Discovery; Judgment Debtor Exam	175.00/hr		140.00
6/9/2011	- WJS	Draft Application for Judgment Debtor Exam; telephone calls to and from Special Master; email from Special Master regarding Interrogatories	175.00/hr		560.00
6/10/2011	- WJS	Review and revise Court Order Granting Special Master Fee Application; email to R Worthen regarding Order	175.00/hr		52.50
6/13/2011	- WJS	E-mail from Special Master; Conference with Attorney (K Christensen) regarding Order Granting Special Master Fee Application; review and revise Application for Judgment Debtor Exam	175.00/hr		175.00
	- KBC	Review Fees Order and Conference with Attorney (W Smith); review Motion	250.00/hr		75.00
6/15/2011	- WJS	Letter from Special Master to McGuane regarding Request for Information/Answers	175.00/hr		35.00
SUBTOTAL:			[1,950.00]
<u>July 2011</u>					
7/12/2011	- KBC	Conference with Attorney (W Smith) regarding Order Denying Application for Judgment Debtor Exam and preparation for teleconference with Court Clerk	250.00/hr		50.00
	- WJS	Review Order from Court Denying App for Judgment Debtor Exam; Conference with Attorney (K Christensen); telephone call to Court regarding Order	175.00/hr		35.00
7/13/2011	- KBC	Conference with Attorney (W Smith) regarding Motion to Reconsider Judgment Debtor Exam Order	250.00/hr		50.00
	- WJS	Conference with Attorneys (D Martin and K Christensen) regarding Court's Order on Application for Judgment Debtor Exam; telephone call to Special Master (left voicemail); telephone call from Special Master	175.00/hr		87.50

Bob Roseberry

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		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
7/18/2011	- KBC	Conference with Attorney (W Smith) regarding Judgment Debtor Responses to Special Master, Judgment Debtor Exam Order and Conference with Client	250.00/hr	50.00
	- WJS	Review McGuane's Responses to Special Master Discovery Questions and file notes; Conference with K Christensen; telephone call to Special Master regarding Case Issues	175.00/hr	157.50
7/22/2011	- WJS	Telephone conference with R. Roseberry regarding Status of Case; telephone calls to and from Special Master regarding Post Office and Postal Inspector Trace of McGuane's Mail	175.00/hr	52.50
7/25/2011	- WJS	Telephone call from Special Master regarding lapsed Polices, Timeline and Notices Received	175.00/hr	17.50
SUBTOTAL:			[500.00]
<u>August 2011</u>				
8/1/2011	- WJS	Draft response to Special Master Report; Research and review Orders; Conference with K Christensen regarding proper Relief to Request from the Court	175.00/hr	490.00
8/8/2011	- WJS	Review Tracking Report from Special Master; telephone call from Special Master regarding coming payments premiums due and responses to discovery; email from Special Master regarding OFG Policies; email from Special Master	175.00/hr	105.00
8/9/2011	- WJS	Draft response to Special Master Report convert to Motion; emails to and from Special Master regarding Amount of remaining funds; prepare Special Masters Fee Application and File	175.00/hr	682.50
8/11/2011	- WJS	Telephone call from Attorney for McGuane Investor regarding Case against McGuane	175.00/hr	35.00
8/12/2011	- WJS	Review and Revise Motion and Response to Special Masters Report; begin drafting Motion for Attorneys Fees and Costs	175.00/hr	297.50
8/17/2011	- WJS	Research regarding Judgment Collections of Assets out of Jurisdiction	175.00/hr	367.50
8/19/2011	- WJS	Preparation of Notice of Payments for Special Master; e-mail to R. Worthen for review	175.00/hr	210.00
8/24/2011	- WJS	E-mail from Special Master; revise Notice of Payments and file	175.00/hr	35.00

Bob Roseberry

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		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
8/25/2011 - KBC	Conference with Attorney, W Smith, regarding Special Master Disclosure Requests	250.00/hr		50.00
- WJS	Review Consent Decree, Enforcement Order, Special Master Reports and other Pleadings; review prior Research	175.00/hr		402.50
8/26/2011 - WJS	Draft Response to Special Master's Report; telephone calls to and from Special Master	175.00/hr		455.00
8/30/2011 - WJS	Draft and Research on Response to Special Master Report	175.00/hr		367.50
8/31/2011 - WJS	Draft Response to Special Master Report and Research	175.00/hr		315.00
SUBTOTAL:				[3,812.50]
<u>September 2011</u>				
9/7/2011 - WJS	Review Special Master more Discovery from B. McGuane, Responses to questions; Conference with K Christensen regarding policies and strategy	175.00/hr		122.50
SUBTOTAL:				[122.50]
For professional services rendered		72.50		\$13,250.00
Additional Charges :				
		<u>Qty/Price</u>		
<u>March 2011</u>				
3/22/2011 - N	Certified Copy Fee	1 9.70		9.70
SUBTOTAL:				[9.70]
Total costs				\$9.70
For professional services rendered		72.50		\$13,259.70

Exhibit 3

Exhibit 3

CHRISTENSEN JAMES & MARTIN
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7440 W. Sahara Avenue
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Telephone: (702) 255-1718
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * * * *

ROSEBERRY FAMILY TRUST, by and through
its Trustee Robert Roseberry,

Plaintiff,

vs.

OMNI ADVISOR GROUP, INC., et al.,

Defendants.

CASE NO.: 2:10-cv-00903-JCM-RJJ

ORDER GRANTING
PLAINTIFF'S MOTION FOR
ATTORNEY'S FEES AND COSTS

Date: N/A

Time: N/A

Pursuant to the Motion for Attorney's Fees and Costs of the Plaintiff for issuance of this Court's Order awarding to Plaintiff its attorney's fees and costs incurred in enforcement of the Consent Decree [Doc. 27] and Enforcement Order [Doc. 50], and Good Cause Appearing therefor,


IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

1. Judgment is entered against Defendants Omni Advisor Group, Inc. ("Omni"), SI 100, LLC ("SI 100"), SI 100 Trust ("SI 100 Trust") and Brian Patrick McGuane ("McGuane"), individually and as Trustee of the SI 100 Trust (collectively "Defendants"), jointly and severally, in favor of Plaintiff for its attorney's fees and costs incurred for the period February 1, 2011

1 through August 31, 2011 in the total sum of Thirteen Thousand Two Hundred Fifty Nine and
2 70/100 Dollars (\$13,259.70) ("Judgment Amount").

3 2. The Judgment Amount shall be paid by the Special Master from the Defendants'
4 funds currently in his possession and/or control within ten (10) days of entry of this Order.
5

6
7 DATED and DONE this 17th day of October, 2011.

8
9 
10 UNITED STATES DISTRICT COURT JUDGE

11 Submitted by:

12 CHRISTENSEN JAMES & MARTIN

13 By: /s/ Wesley J. Smith
14 Wesley J. Smith, Esq.
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